

Federal Court



Cour fédérale

**Date: 20240522**

**Docket: T-2317-23**

**Citation: 2024 FC 777**

**Ottawa, Ontario, May 22, 2024**

**PRESENT: Madam Justice Azmudeh**

**BETWEEN:**

**RICHARD BRAITHWAITE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Richard Braithwaite, brings this application for judicial review of a decision (the “Decision”) by the National Second Level Appeals Unit (the “N2LA”) of Veterans Affairs Canada (“VAC”), which affirmed previous decisions to deny the Applicant’s request for: (1) approval of dental implant treatments; and (2) exceeding maximum rates for approved root canal treatments.

[2] I am sympathetic to the Applicant's situation, and have no reason to doubt that he honestly believes he is eligible for more coverage than allowed. I also understand that he found it frustrating to navigate the multitude levels of bureaucracy and decision-making. Nevertheless, I find the only decision for consideration on this judicial review is the N2LA's decision.

[3] For reasons that follow, I find the Decision to determine the Applicant ineligible for dental implants or to not pay for service in excess of the maximum allowable to be reasonable without any breach of procedural fairness. I therefore dismiss the Applicant's application for judicial review.

## II. Preliminary Issues

A. The Style of cause;

B. The Applicant's submission of evidence not before the decision-maker.

### A. *The Style of Cause*

[4] The Applicant is self-represented and has filed his application naming the "Veteran Affairs (National Second level Appeals Unit)" as the Respondent.

[5] The style of cause shall be amended to note the "Attorney General of Canada" as the Respondent, in accordance with Rule 303 (2) of the *Federal Courts Rules* [the "Rules"]:

*Federal Courts Rules, SOR/98-106*

**Respondents**

**303 (1)** Subject to subsection (2), an applicant shall name as a respondent every person

(a) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or

(b) required to be named as a party under an Act of Parliament pursuant to which the application is brought.

Application for judicial review

**(2)** Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.

Substitution for Attorney General

**(3)** On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent after having been named under subsection (2), the Court may substitute another person or body, including the tribunal in respect of which the application is made, as a respondent in the place of the Attorney General of Canada.

**Défendeurs**

**303 (1)** Sous réserve du paragraphe (2), le demandeur désigne à titre de défendeur :

a) toute personne directement touchée par l'ordonnance recherchée, autre que l'office fédéral visé par la demande;

b) toute autre personne qui doit être désignée à titre de partie aux termes de la loi fédérale ou de ses textes d'application qui prévoient ou autorisent la présentation de la demande.

Défendeurs — demande de contrôle judiciaire

**(2)** Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1), le demandeur désigne le procureur général du Canada à ce titre.

Remplaçant du procureur général

**(3)** La Cour peut, sur requête du procureur général du Canada, si elle est convaincue que celui-ci est incapable d'agir à titre de défendeur ou n'est pas disposé à le faire après avoir été ainsi désigné conformément au paragraphe (2), désigner en remplacement une autre personne ou entité, y compris l'office fédéral visé par la demande.

*B. The Applicant's submission of evidence not before the decision-maker*

[6] On new evidence not before the N2LA, the Respondent argues that the evidentiary record is restricted to that which was before the decision-maker, otherwise, the evidence is inadmissible.

The Respondent does not object to the inclusion of new information the Applicant presented to set out a more fulsome background to his case.

[7] More specifically, the Respondent argues that the information the Applicant provided in exhibits Y and Z to his affidavit were substantive and not before N2LA, and should therefore not be in the record unless this Court is satisfied that they meet the exceptional circumstances set out

by (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency* (Access Copyright), 2012 FCA 22 [*Association of Universities*], at para 19). The objectionable parts of the affidavit and the exhibits pertain to letters of support by an occupational therapist and a dentist written after the date of the Decision.

[8] I agree that in an application for judicial review, the Court's role is to examine the record before the decision-maker to determine whether the decision of the administrative decision-maker was reached in a reasonable and procedurally fair manner considering the legal and factual context before the decision-maker. Therefore, unless exceptional circumstances exists, documents that were not available to the decision-maker are not admissible on judicial review, and the Court should not consider them (*Association of Universities*, at para 19).

[9] In *Association of Universities* at paragraphs 19 and 20, the Federal Court of Appeal recognized three (3) exceptions to this general rule: (1) the new evidence contains general contextual information; (2) the new evidence responds to questions of procedural fairness; or (3) the new evidence highlights the complete absence of evidence before the administrative decision-maker.

[10] I have reviewed the documents and I find that they do not trigger an exceptional circumstance. Nor has the Applicant made any argument as to which of any of these exceptions apply. As a result, I have not considered these documents on judicial review.

III. Background

A. *Relevant legal framework on the treatment of dental benefits by Veteran Affairs Canada (VAC).*

[11] Under Part 1 of *Veterans Health Care Regulations*, SOR/90-594 [*VHCR*], VAC provides certain reimbursements for health care treatment benefits (relevant parts are included in the Annex to this decision). Sections 3 of the *VHCR* sets out who is eligible for treatment benefits. Section 4 of the *VHCR* sets out the available treatment benefits, which include dental examinations and treatments. Lastly, section 5 of the *VHCR* sets out the rates VAC will pay for treatment benefits.

[12] In situations where the treatment benefits are not fully insured health services of the province, the amount payable by VAC is based on the fee schedule of the relevant association of health professionals (*VHCR*, s. 5(1)(b)).

[13] In addition to the *VHCR*, VAC's treatment of dental benefits is also governed a policy instrument titled "Dental Services (POC 04)" (the "Policy"). The Policy is designed to give direction on the provisions of dental services benefits for eligible individuals and explains that coverage is for basic dental care, and some pre-authorized non-basic and major (excluded) dental services are subject to special criteria.

[14] The Policy defines basic, non-basic, and major (excluded) dental services and sets out the process and criteria for obtaining authorization for non-basic and major (excluded) dental services:

**2. Basic dental services** are common or accepted forms of treatment such as dental cleaning, exams, fillings, simple extractions, and standard dentures.

**3. Non-basic services** include treatment such as crownwork or bridgework, and require pre-authorization by Veterans Affairs Canada.

a. Individual dental providers must provide treatment plans to Veterans Affairs Canada for approval of non-basic dental services. b. The provision of non-basic dental services must meet the following criteria:

- i. the treatment is required in order to address health needs; and
- ii. oral or general health would be placed at risk in the absence of these treatments.

**4. Major dental services** include treatment such as implant treatment and equilibrated dentures. Dental services that are considered to be major dental services (**also referred to as excluded procedures**) require pre-authorization by Veterans Affairs Canada.

a. Individual dental providers must provide treatment plans to Veterans Affairs Canada for approval of major dental services.

b. The provision of major dental services is only approved when there is no other clinically acceptable treatment available, and one of the following criteria apply:

- i. the procedures or services are clinically necessary to maintain oral health; or
- ii. the individual's oral and/or general health would be negatively affected in the absence of this particular treatment; or
- iii. the oral health is such that the individual is a good candidate for the procedure being proposed and the individual's health will not be negatively impacted by what is being proposed; or
- iv. other significant factors exist (where the treatment is required in order to maintain overall health and nutrition).

[15] As seen above, in order to obtain approval for a major (excluded) dental service such as implant treatment, dental providers must first submit a treatment plan to VAC. Approval will only be granted if no other clinically acceptable treatment is available and one of the four listed criteria apply.

[16] The Policy also explains that, in accordance with section 5 of the *VHCR*, VAC will only pay dental services fees at the rate set out in the fee schedule for the associated provincial / territorial Dental Association (Policy, para 14).

IV. Two-level statutory review process

[17] Treatment benefits decisions, including approvals of non-basic and major dental services are issued by an officer at the Medical Authorization Centre. If a person is dissatisfied with an initial decision made in relation to treatment benefits, s. 36(1) of the *VHCR* provides a right to apply to the Minister of Veterans Affairs in writing for review of that decision. Reviews pursuant to s. 36(1) of the *VHCR* are conducted by VAC's National First Level Appeals Unit ("N1LA Unit").

[18] If a person is dissatisfied with a decision made by the N1LA Unit, s. 36(2) of the *VHCR* provides a right to apply to the Minister of Veterans Affairs in writing for a second review. Reviews pursuant to s. 36(2) of the *VHCR* are conducted by VAC's N2LA Unit. Decisions issued by the N2LA Unit are the final decisions issued by VAC.

[19] If a person is dissatisfied with a decision made by the N2LA Unit, they have the option of applying for a judicial review of that decision in the Federal Court, which is what has happened here.

V. The relevant facts of this case and the review process

[20] The Applicant is a Veteran of the Canadian Armed Forces and is eligible for dental treatment benefits, including bruxism and Temporomandibular Dysfunction (“TMJ”). As set out below, the starting point of this dispute relates to two decisions of the Medical Authorization Centre denying approvals for implant treatments on three of the Applicant’s teeth. The Applicant requested a review by the N1LA, who confirmed the initial decisions. The Applicant then requested a review by the N2LA, who confirmed the N1LA decisions.

[21] On December 2, 2021, an officer at the Medical Authorization Centre issued a decision denying, in part, a request for dental services sent by the Applicant’s dentists, Dr. Moradi and Dr. Longchamps. The request totaled \$7023.00, for: (i) root canal treatments and one surface restorations on teeth 15 and 35; (ii) mesostructures and implant supported crowns on teeth 46 and 47.

[22] The officer approved the request for root canals and surface restoration up to \$1989.90, the maximum amount payable for the treatment under the Provincial Dental Association fee guide. The Applicant was informed that they would be required to pay \$955.20 out-of-pocket, the difference between the cost of the requested treatment and the covered amount.

[23] The officer denied the request for the implant treatments. The officer noted that implants are an exceptional procedure, and that an alternate option exists such as a lower partial denture.

[24] On February 14, 2022, a different officer at the Medical Authorization Centre issued a decision in relation to a new request from the Applicant’s dentist, Dr. McGaw, for dental



services totaling \$5763.00. The request was for an implant supported crown and complicated extraction on tooth 35.

[25] The officer denied the request for implant treatment on tooth 35, noting that the criteria for an exceptional procedure was not met. However, the officer approved the complicated extraction for the amount of \$253.00.

[26] On March 1, 2022, the Applicant requested reviews of two Medical Authorization Centre decisions from VAC. The N1LA Unit treated these separately, and on May 13 and May 25, 2022, upheld the decisions. The N1LA officer found proper reimbursement for root canal and surface restoration treatments and insufficient evidence for approving implant treatment.

[27] On December 25, 2022, the Applicant requested another review, including a support letter from psychiatrist Dr. Passey, who highlighted the worsening of the Applicant's PTSD and MDD due to dental treatment delays and recommended implants due to the Applicant's inability to handle dentures or bridges.

[28] The N2LA Unit accepted this late request and on October 10, 2023, upheld the previous decisions. The N2LA officer determined that VAC could only reimburse up to the Provincial dental association's maximum rate and that implants were not justified due to other available treatments and the Applicant's bruxism.

[29] The officer acknowledged Dr. Passey's letter but found insufficient evidence to prove that no other treatments could meet the Applicant's needs.

#### VI. Judicial Review Issues and Standard of Review

[30] The Applicant has raised several issues about his understandable frustrations with a lengthy and complex process that has resulted in the denial of certain services. However, the issues can be summarized as follows:

- a) The procedural fairness of the Decision; and
- b) The reasonableness of the Decision; and

#### VII. Standard of Review

[31] The standard of review applicable in this case is reasonableness. When the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and to assess whether the decision was based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision-maker” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at para 85). The reviewing court must therefore ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov*, at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9, at paras 47 and 74). It is up to the party challenging an administrative decision to show that it is unreasonable.

[32] Review on a standard of reasonableness will involve a rigorous assessment of administrative decisions. However, as part of its inquiry into the reasonableness of a decision, the reviewing court must examine the reasons provided with “respectful attention” and seek to

understand the line of reasoning followed by the decision-maker to arrive at its conclusion (*Vavilov*, at para 84). The reviewing court will adopt a posture of restraint, intervening only “where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov*, at para 13). A decision will not be overturned on the basis of merely superficial or peripheral errors. Rather, the impugned decision will have to contain sufficiently serious shortcomings, such as internally incoherent reasoning (*Vavilov*, at paras 100–101).

[33] For issues of procedural fairness, as stated by Justice Go in *Jamshidi v Canada (Citizenship and Immigration)*, 2024 FC 627, at para 18: “the standard of review is akin to correctness and no deference is owed to the decision-maker” (citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54 and 56).

A. *Issue A: There is no Breach of Procedural Fairness*

[34] Even though not directly argued, the Applicant implies that the Officer failed to afford his procedural fairness because the process was lengthy, frustrating and stressful. As I said, I do sympathize with the Applicant’s frustration. However, the record shows that the officer considered all of the Applicant’s materials and submissions, even those provided after the deadline.

[35] The Applicant also argued that the need to wait for pre-approval often resulted in delays that contributed to further tooth decay, and this was unfair. If he were allowed to incur an out-of-pocket cost for which VAC reimbursed him, he would have maintained a better oral health.

[36] I do not find that the Applicant's general frustration with the process or his disagreement with the legal criteria of dental benefit eligibility to amount to a breach of procedural fairness.

B. *The officer's Decision was reasonable*

[37] The parties agree that the standard of review is one of reasonableness, as per *Vavilov*, (see paras 12-13), which is a deferential, but robust, standard of review. For a decision to be unreasonable, the Applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov*, at para 100). Not all errors or concerns about a decision will warrant intervention.

[38] The Applicant did not pursue an argument for the cost of the root canal, above and beyond the maximum allowed. I also find that it was reasonable to allow up to the maximum amount allowed by the VAC regulations and Policy.

[39] The Applicant argues that it was unreasonable to deny coverage for the dental implants. As the Applicant submits, he suffered from a serious case of bruxism that contributed to his complex oral problems.

[40] As indicated on N2LA appeal officer's worksheet, which is part of the record and constitute the appeal officer's reasons, the decision to deny implant was not solely for financial reasons. The Worksheet refers to an opinion by a dentist who had deemed the Applicant's complex condition not to be suitable for implants:

**Not all patients are good candidates for dental implants and careful patient evaluation and treatment planning is required. There are anatomical considerations and limitations in relation**

**to implant placement in addition to implications regarding implant loading.** (Emphasis in original)

Adequate jaw bone is necessary to support a dental implant. Patients with significant bone volume loss are complex cases requiring bone grafting and soft tissue augmentation with increased rates of failure.

Smoking, diabetes, history of periodontitis and/or dental caries are also negative indicators for implant success.

**Implants are not recommended for individuals with bruxism due to the increased risk of implant failure.** (My emphasis)

[41] Since a dental implant is a major treatment, the Applicant also needed to submit a “Medical Questionnaire: Dental and Oral Conditions” to evaluate his condition. This questionnaire was completed by his dentist, Dr. Joel Durling who made the following comments under “Additional Information”:

Recommended lower partial denture to restore balance to occlusion as limit effects of bruxism on remaining teeth. Patient says he cannot wear lower denture due to PTSD associated with a denture on a dead body he dealt with in past. Patient is adamant that he needs another solution for replacement of denture. Have referred patient to be assessed for suitability with implants.

[42] Even though Dr. Durling recommended dentures and his hesitation was due to the Applicant’s PTSD, there is nothing before me to suggest that the suitability assessment was done or that its results were sent to the officer who made the Decision.

[43] The Applicant also submitted a letter by his psychiatrist, a Dr. Passey to the officer. Dr. Passey remarked the following:

Mr. Braithwaite has now lost a number of teeth because of his Bruxism such that he now likely requires dentures. Unfortunately, he has a service related traumatic exposure that caused him to see numerous body parts, skulls and jawbones with teeth etc. As a result, trying to handle dentures or dental bridges causes him have flashbacks and serious intrusive memories that are incapacitating.

It is my clinical opinion that Mr. Braithwaite should have dental implants to replace his teeth that were lost due to his service related Bruxism. Failure to do this will worsen his PTSD and MDD symptoms and therefore his daily ability to function for ADLs and daily life stressors.

[44] I find that while Dr. Passey's expertise extends to his ability to comment on the Applicant's mental state, including PTSD, N2LA officer's duty was to assess a dental recommendations. To assess a dental solution, here are the relevant information before the N2LA appeal officer:

- An opinion from a dental advisor on the viability of dentures and the Applicant's unsuitability for implants due to his particular bruxism;
- Dr. Durling's opinion on the suitability of dentures but the potential issues due to stated PTSD and a referral to assess the recommendation of implants. The results of such assessment were not provided to N2LA;
- Dr. Passey's non-dental, psychiatric opinion on the triggering effect of dentures without offering a psychiatric solution.

[45] Here is a relevant part of the Decision:

The information on your file has been thoroughly reviewed, including a letter from Dr. D.G. Passey Psychiatrist, dated 8 November 2022. In consultation with our dental advisor, it has been determined that exceptional criteria has not been met for an implant with mesostructures, 3D scan, surgical template, bone preservation, sedation and implant supported crown on tooth 3-5. It was determined that alternate treatment options exist; as noted by the treating dentist (28 September 2022) a lower removable partial denture would be the best treatment option to replace missing teeth 3-5, 4-6 and 4-7. It has been established that implants would not be recommended due to your reported significant bruxism. Dr. Passey's letter, although speaks to your need for restorative dental treatments, does not provide supporting medical evidence to indicate why other available less expensive, yet clinically acceptable, treatment options would not meet your health needs. Also, no new dental evidence was provided with your latest request to support the dental services. Therefore, based on the available information, I am confirming the previous decisions dated 25 May 2022 and 13 May 2022.

[46] I find that the chain of reasoning is clear in N2LA's appeal officer's assessment. It was within the appeal officer's jurisdiction to weigh the evidence and provide a rationale. It was not unreasonable under the circumstance to give more weight to the expert dental opinions than to the psychiatrist's, especially when two dental opinions were unequivocal in finding dentures suitable, and that one specifically found that the Applicant's bruxism made him an unsuitable candidate for implants. Dr. Durling's opinion was equivocal on implants and needed further assessment that was ultimately not before the officer.

[47] The Decision was intelligible, justifiable and transparent and the reader can clearly understand the chain of reasoning. It is not for this Court to reweigh the evidence.

VIII. Cost

[48] Rule 400 gives the Court “full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.” Having considered the factors listed in sub rule 400(3) of the *Rules*, and all other circumstances of this case, including the fact that Respondent did not request costs, I find that no award for costs is warranted in this matter.

IX. Conclusion

[49] The application for judicial review is dismissed, without costs.



**ANNEX***Veterans Health Care Regulations, SOR/90-594***Treatment Benefits**

**3 (1)** The following clients are eligible to receive treatment benefits in Canada or elsewhere in respect of a pensioned condition:

- (a) a veteran pensioner;
- (b) a civilian pensioner;
- (c) a Red Cross pensioner; and
- (d) a flying accident pensioner.

**(2)** A Newfoundland Special Award pensioner is eligible to receive treatment benefits in Canada or elsewhere in respect of the disability for which they receive the award.

**(3)** The following clients are eligible to receive treatment benefits in Canada or elsewhere in respect of a pensioned condition or a disability for which they are entitled to a disability award or entitled to pain and suffering compensation to the extent that those benefits are not available to them as a member or former member of the Canadian Forces:

- (a) a special duty service pensioner;
- (b) a military service pensioner; and
- (c) a former member or a reserve force member.

**(4)** The following clients are eligible to receive treatment benefits in Canada, for any health condition, to the extent that those benefits are not available to them as a member or former member of the Canadian Forces nor available as an insured service under a provincial health care system:

- (a) a veteran pensioner or a civilian pensioner if the extent of their disability in respect of the aggregate of all of their disability assessments under the *Pension Act* and the *Veterans Well-being Act* is equal to or greater than 48%;
- (b) a client referred to in subsection (1) or (2) who is seriously disabled; and
- (c) a special duty service pensioner or a former member or reserve force member who is entitled to a disability award or pain and suffering compensation in respect of special

**Avantages médicaux**

**3 (1)** Les clients ci-après sont admissibles à des avantages médicaux au Canada ou ailleurs, à l'égard d'un état indemnisé :

- a) l'ancien combattant pensionné;
- b) le pensionné civil;
- c) le pensionné de la Croix-Rouge;
- d) le pensionné à la suite d'un accident d'aviation.

**(2)** Le pensionné titulaire d'une attribution spéciale (Terre-Neuve) est admissible à des avantages médicaux au Canada ou ailleurs, à l'égard de l'invalidité pour laquelle il touche l'attribution.

**(3)** Les clients ci-après sont admissibles à des avantages médicaux au Canada ou ailleurs, à l'égard d'un état indemnisé ou de l'invalidité pour laquelle il a droit à une indemnité d'invalidité ou à une indemnité pour douleur et souffrance dans la mesure où ils ne peuvent les obtenir en qualité de membre ou d'ancien membre des Forces canadiennes, selon le cas :

- a) le pensionné du service spécial;
- b) le pensionné du service militaire;
- c) l'ancien membre ou le membre de la force de réserve.

**(4)** Les clients ci-après sont admissibles à des avantages médicaux au Canada, quelle que soit l'affection, dans la mesure où ils ne peuvent les obtenir en qualité de membre ou d'ancien membre des Forces canadiennes ou au titre de services assurés dans le cadre du régime d'assurance-maladie d'une province :

- a) l'ancien combattant pensionné ou le pensionné civil dont le total des degrés d'invalidité estimés au titre de la *Loi sur les pensions* et de la *Loi sur le bien-être des vétérans* est égal ou supérieur à 48 %;
- b) le client visé aux paragraphes (1) ou (2) qui souffre d'une déficience grave;
- c) le pensionné du service spécial, l'ancien membre ou le membre de la force de réserve

duty service, if they are eligible to receive any of the veterans independence program services referred to in paragraphs 19(a), (b) and (e).

**(5)** The following clients are eligible to receive treatment benefits in Canada, for any health condition, to the extent that those benefits are not available as an insured service under a provincial health care system:

- (a) an income-qualified veteran;
- (b) an income-qualified civilian;
- (c) a client who is in receipt of adult residential care, intermediate care or chronic care in a contract bed;
- (d) a client who is in receipt of the cost to them of intermediate care or chronic care under section 21.1 or 21.2;
- (e) a Canada service veteran who is in receipt of chronic care in a community facility under subsection 22(2); and
- (f) a client who is in receipt of chronic care in a community facility under section 22.1.

**(6)** The following clients are eligible to receive treatment benefits in Canada, for any health condition, to the extent that those benefits are not available as an insured service under a provincial health care system:

- (a) if they are eligible under section 15, 17 or 17.1 to receive any of the veterans independence program services referred to in paragraphs 19(a), (b) and (e) or are in receipt of those services under section 18:

- (i) a veteran pensioner,
- (ii) an overseas service veteran, and
- (iii) [Repealed, SOR/2022-69, s. 2]
- (iv) an overseas service civilian; and
- (b) if they are eligible to receive any of the veterans independence program services referred to in paragraphs 19(a), (b) and (e):

- (i) a civilian pensioner,
- (ii) a prisoner of war who is entitled to basic compensation under subsection 71.2(1) of the *Pension Act*,
- (iii) a Canada service veteran, and
- (iv) a former member or a reserve force member who has received a detention benefit under Part 3 of the *Veterans Well-being Act*.

qui a droit à une indemnité d'invalidité ou à une indemnité pour douleur et souffrance en raison du service spécial, s'il est admissible à des services du programme pour l'autonomie des anciens combattants visés aux alinéas 19a), b) et e).

**(5)** Les clients ci-après sont admissibles à des avantages médicaux au Canada, quelle que soit l'affection, dans la mesure où ils ne peuvent les obtenir au titre de services assurés dans le cadre du régime d'assurance-maladie d'une province :

- a) l'ancien combattant au revenu admissible;
- b) le civil au revenu admissible;
- c) le client qui reçoit des soins institutionnels pour adultes, des soins intermédiaires ou des soins prolongés lorsqu'il occupe un lit réservé;
- d) le client qui reçoit, aux termes de l'article 21.1 ou 21.2, le paiement de ce qu'il lui en coûte pour recevoir des soins intermédiaires ou des soins prolongés;
- e) l'ancien combattant ayant servi au Canada qui, aux termes du paragraphe 22(2), reçoit des soins prolongés dans un établissement communautaire;
- f) le client qui reçoit, aux termes de l'article 22.1, des soins prolongés dans un établissement communautaire.

**(6)** Les clients ci-après sont admissibles à des avantages médicaux au Canada, quelle que soit l'affection, dans la mesure où ils ne peuvent les obtenir au titre de services assurés dans le cadre du régime d'assurance-maladie d'une province :

- a) s'il est admissible, en application des articles 15, 17 ou 17.1, à des services du programme pour l'autonomie des anciens combattants visés aux alinéas 19a), b) et e) ou qu'il les reçoit en application de l'article 18 :
  - (i) l'ancien combattant pensionné,
  - (ii) l'ancien combattant ayant servi outre-mer,
  - (iii) [Abrogé, DORS/2022-69, art. 2]
  - (iv) le civil ayant servi outre-mer;
- b) s'il est admissible à des services du programme pour l'autonomie des anciens combattants visés aux alinéas 19a), b) et e) :

(7) If a client is hospitalized and they assert that hospitalization is required in respect of their pensioned condition, treatment benefits in respect of that hospitalization, in Canada or elsewhere, are deemed to be required in respect of the pensioned condition, for the period during which there is uncertainty as to whether the primary condition in respect of which the treatment benefits are required is the client's pensioned condition.

**4** Treatment benefits consist of the following:

- (a) any medical, surgical or dental examination or treatment provided by a health professional;
- (b) the provision of any surgical or prosthetic device or any aid approved by the Minister, the maintenance of the device or aid and any home adaptation that is necessary to accommodate or facilitate its use;
- (c) preventive health care approved by the Minister; and
- (d) pharmaceuticals prescribed by a physician, dentist or other person authorized to prescribe pharmaceuticals under the laws in force in the province or the country where the pharmaceuticals are provided.

**5 (1)** Where treatment benefits are provided in Canada, the rate at which the treatment benefits and any administrative costs related thereto are payable is

- (a) where the treatment benefits are fully insured health services of the province in which they are provided, the rate established by the province for those services and costs;

- (i) le pensionné civil,
- (ii) le prisonnier de guerre ayant droit à une indemnité au titre du paragraphe 71.2(1) de la *Loi sur les pensions*,
- (iii) l'ancien combattant ayant servi au Canada,
- (iv) l'ancien membre ou le membre de la force de réserve qui a reçu une indemnité de captivité au titre de la partie 3 de la *Loi sur le bien-être des vétérans*.

(7) Lorsqu'un client hospitalisé affirme que son état indemnisé exige l'hospitalisation, les avantages médicaux liés à cette hospitalisation, au Canada ou ailleurs, sont réputés être requis à l'égard de cet état indemnisé pour la période pendant laquelle il n'est pas certain que l'état premier pour lequel les avantages médicaux s'imposent soit l'état indemnisé.

**4** Les avantages médicaux sont constitués de ce qui suit :

- a) tout examen médical, chirurgical ou dentaire ou tout traitement fourni par le professionnel de la santé;
- b) la fourniture de tout instrument chirurgical ou de toute prothèse, ou de toute aide approuvée par le ministre, l'entretien de la prothèse ou de l'aide et toute adaptation du domicile qui en permet ou en facilite l'utilisation;
- c) les soins préventifs approuvés par le ministre;
- d) tout médicament prescrit par un médecin, un dentiste ou toute autre personne habilitée à prescrire des médicaments en vertu des lois en vigueur dans la province ou le pays où le médicament est fourni.

**5 (1)** Lorsque les avantages médicaux sont fournis au Canada, leur coût et les frais administratifs connexes sont payables de la façon suivante :

- a) lorsque ces avantages médicaux constituent des services de santé entièrement assurés par la province dans laquelle ils sont fournis, au taux établi par la province pour ces services et ces frais;

(b) where the treatment benefits are not fully insured health services of the province in which they are provided and, in respect of that province, an association of health professionals has adopted a fee schedule for treatment benefits and costs, the rate that is approved by the Minister and that is based on that fee schedule; and

(c) in any other case, the rate normally paid for those treatment benefits and costs in the community in which the treatment benefits are provided.

**(2)** Where treatment benefits are provided in a country other than Canada, the rate at which the treatment benefits and any administrative costs related thereto are payable is

(a) the rate established for former members of the armed forces of that country for those treatment benefits and costs; or

(b) where no rate referred to in paragraph (a) is established, the lesser of the rate that would be payable to the client under subsection (1) if the client were resident in Ottawa, Ontario and the actual rate paid by the client for the treatment benefits and costs.

b) lorsque ces avantages médicaux ne constituent pas des services de santé entièrement assurés par la province dans laquelle ils sont fournis et qu'à l'égard de cette province une association de professionnels de la santé a adopté un barème d'avantages médicaux et de frais, au taux approuvé par le ministre et fondé sur ce barème;

c) dans tous les autres cas, au taux habituellement payé pour ces avantages médicaux et ces frais dans la localité où sont fournis ces avantages.

**(2)** Lorsque les avantages médicaux sont fournis dans un pays autre que le Canada, leur coût et les frais administratifs connexes sont payables de la façon suivante :

a) au taux établi pour l'ancien membre des forces armées du pays relativement à ces avantages médicaux et à ces frais;

b) à défaut du taux visé à l'alinéa a), au moindre du taux qui serait payable au client aux termes du paragraphe (1) si celui-ci résidait à Ottawa (Ontario) et du taux réel que paie le client pour les avantages médicaux et les frais.

**JUDGMENT in T-2317-23**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed without cost.

"Negar Azmudeh"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2317-23

**STYLE OF CAUSE:** RICHARD BRAITHWAITE v ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** VANCOUVER, BC

**DATE OF HEARING:** MAY 15, 2024

**REASONS FOR JUDGMENT  
AND JUDGMENT:** AZMUDEH J.

**DATED:** MAY 22, 2024

**APPEARANCES:**

Richard BRAITHWAITE ON HIS OWN BEHALF

Marshall Jeske FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE RESPONDENT  
Department of Justice Canada  
British Columbia Region